

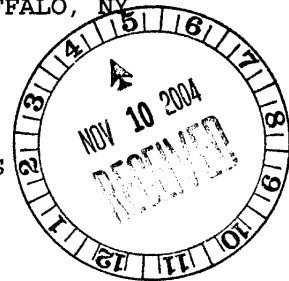
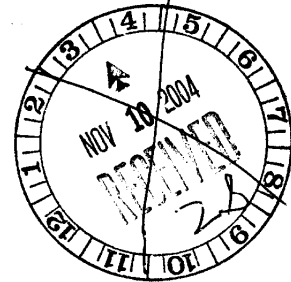
ORIGINAL

Before the  
SURFACE TRANSPORTATION BOARD

Docket No. AB-156 Sub-No. 25X) \*/

DELAWARE AND HUDSON RAILWAY COMPANY, INC.-DISCONTINUANCE  
OF TRACKAGE RIGHTS-BETWEEN LANESBORO, PA, AND BUFFALO, NY

REPLY TO PETITION FOR EXEMPTION, AND  
PETITION FOR CONSOLIDATION OF PROCEEDINGS



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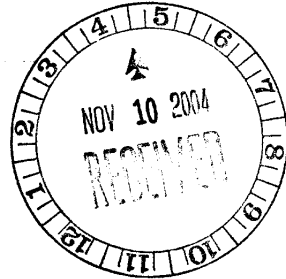
Attorney for Samuel J. Nasca

Due Date: November 10, 2004

\*/ Embraces request for consolidation with Finance Docket No. 34561, Canadian Pacific Railway Company-Trackage Rights Exemption-Norfolk Southern Railway Company-Buffalo, NY; and Finance Docket No. 34562. Norfolk Southern Railway Company-Trackage Rights Exemption-Delaware and Hudson Railway Company, Inc.-Between Saratoga Springs, NY, and Binghamton, NY.

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REPLY TO PETITION FOR EXEMPTION, AND  
PETITION FOR CONSOLIDATION OF PROCEEDINGS

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Preliminary Statement

Samuel J. Nasca,<sup>1/</sup> for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), submits this reply to the petition, filed October 1, 2004, by Delaware and Hudson Railway Company, Inc. (D&H), for exemption from the provisions of 49 U.S.C. 10903, so as to discontinue trackage rights over the line of Norfolk Southern Railway Company (NSR), between Lanesboro, PA, and Buffalo, NY, and connecting trackage in the Buffalo area. The D&H filing was noticed by the Board on October 21, 2004, with replies due 20 days thereafter, on November 10,

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<sup>1/</sup> New York Legislative Director for United Transportation Union, with offices at 35 Fuller road, Albany, NY 12205.

2004. 69 Fed. Reg. 61904 (Oct. 21, 2004).<sup>2/</sup> the D&H petition for exemption should be denied.

UTU-NY also petitions the Board for consolidation of the instant D&H discontinuance proceeding, with two other proceedings, also instituted on October 1, 2004. The two related filings were first, Canadian Pacific Railway Company (CPRC), which filed a notice of exemption pursuant to the trackage rights class exemption,<sup>3/</sup> to operate over some 12.45 miles of line being discontinued by D&H in the Buffalo area. Finance Docket No. 34561, Canadian Pacific Railway Company-Trackage Rights Exemption-Norfolk Southern Railway Company-Buffalo, NY. 69 Fed. Reg. 61903-4 (Oct. 21, 2004). Second, Norfolk Southern Railway Company (NSR), filed a trackage rights notice of exemption, to operate over D&H between Saratoga Springs and Binghamton, NY, and connecting trackage. Finance Docket No. 34562, Norfolk Southern Railway Company-Trackage Rights Exemption-Delaware and Hudson Railway Company, Inc.-Between Saratoga Springs, NY, and Binghamton, NY. 69 Fed. Reg. 61903 (Oct. 21, 2004).

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<sup>2/</sup> UTU-NY on November 1, 2004, petitioned for an extension of time within which to file this reply. The Board on November 10, denied this request as untimely, citing 49 CFR 1152.26. But the cited reference is applicable only to discontinuance applications, not to discontinuance petitions for exemption. Request for time extension for discontinuance exemptions is governed by the rule of general applicability--10 days before the due date. 49 CFR 1104.7(b). Under the November 10 ruling, one would request an extension of time even before the due date is established, or even before the proceeding is instituted.

<sup>3/</sup> 49 CFR 1180.2(d)(7), .4(g)(2); Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985), aff'd 819 F.2d 311 (D.C. Cir. 1987).

UTU-NY sought to stay the operation of the two trackage rights notices, but the request was denied by the STB's Chairman on October 27, 2004.<sup>4/</sup> UTU-NY on October 25, petitioned to revoke the two trackage rights exemptions, which petitions are pending.

I. CONSOLIDATION IS REQUIRED. The Board should consolidate the three proceedings. In essence, a single transactions is involved, which the carriers have sought to separate--presumably to avoid employee protection--or to expedite regulatory approval or exemption.

D&H, CPR, and NSR, jointly filed with the Board on October 12, 2004, in all three proceedings, a "Summary of Documents." The summary was about the Memorandum of Understanding (MOU), dated June 30, 2004, between NSR and CPKC (along with CPKC subsidiaries D&H and Soo Line), for consolidation and coordination of properties and facilities in the Northeastern United States. (NEUS).

Fragmentation of the transaction into three separate proceedings is contrary to the public interest, and to appropriate employee protective conditions.

The verified statement of Samuel J. Nasca illustrates the interconnection between the three proceedings. As announced November 8 (Exhibit 1), Canadian National Railway (CNR) trains arriving and departing the Buffalo gateway, and handled over the "Southern Tier" D&H/NSR route between Buffalo and Binghamton, will be diverted by CNR for movement over D&H between Rouses Point and Saratoga Springs, hence via NSR to and from Binghamton.

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<sup>4/</sup> A so-called "housekeeping stay" had been granted on October 7, 2004, to review the various notices and pleadings.

Of course, the D&H discontinuance is related NSR's handling of D&H business as "haulage," essentially a coordination between the two carriers.

It would have been better practice for D&H, CPR, and NSR, to have filed a single application or exemption under 49 U.S.C. 11323(a)(2) for the consolidation and coordination of property and facilities. However, hopefully the same result can be achieved, at least from an employee-standpoint by imposition of New York Dock conditions.

Protestant appreciates that the Board has been loathe to direct consolidation or proceedings, and has done so without explanation. We presume this is owing to the agency's determination to impose fees on the public for filing pleadings. However, the failure to consolidate related proceedings was a major criticism of the former Interstate Commerce Commission. For citations in this regard, see: B. & O. R. Co. v. United States, 386 U.S. 372, 424-38 (1967). Here, the D&H discontinuance should be consolidated with CPRC Notice, and with NSR Notice.

II. THE D&H PETITION SHOULD BE DENIED. The D&H's petition for the substantial 229.5 mile trackage should be denied. This is more than a simple discontinuance. In short, it does not meet the test of 49 U.S.C. 10505.

1. Rail transportation policy. The Board's attention is directed to the statutory provisions from which D&H seeks exemption--here the public convenience and necessity and employee protection requirements of 49 U.S.C. 10903. The discontinuance proposal is inextricably related to trackage rights, which are

subject to a degree of agency regulation--specified forms of notice, filing of agreements with the agency, etc. Thus, the provisions of 49 U.S.C. 10101 which are impacted include criteria (3), (4), (5), (8), (9), (11), and (14). Just as trackage rights are subject to a degree of regulation, so too are discontinuance proposals intimately related to trackage rights. Here, two sets of trackage rights are involved, CPRC Notice, and NSR Notice.

D&H's attempt to fragment a major interrelated transaction into separate proceedings, and have each evaluated separately, is inconsistent with the goals of the rail transportation policy. D&H should be relegated to proving its case under 49 U.S.C. 10903.

2. Not Limited Scope. The D&H discontinuance is not of limited scope. Even D&H acknowledges that the "scope" embraces haulage, switching arrangements, interchange with other carriers, and other factors outside the usual line discontinuance. (Petition 11-12).

The scope of the transaction is very broad. It cannot be considered "limited."

3. Competitive Market Power. Converting D&H train operation to "haulage" will not suffice to retain D&H as a competitive entity in the Northeastern United States. The quality of service will be dependent upon its competitor over the "Southern Tier," namely, NSR.

The U.S. Congress, through United States Railroad Association (USRA) and the Final System Plan (FSP) considered D&H important to the competitive balance of railroad transportation in the East.

Thus, D&H was extended west from Buffalo, and ultimately south to Harrisburg, Philadelphia, and Washington.

The elimination of D&H as an effective competitor for railroad service between the east and the Buffalo gateway is contrary to the Congressional directive. Continued regulation of this transaction, by an application pursuant to 49 U.S.C. 10903, is necessary to protect shippers from an abuse of market power. The Congress found D&H necessary, and such finding should not be undone through the exemption process. A complete record is necessary under 49 U.S.C. 10903.

III. THE OCTOBER 21, 2004 DECISION-EMPLOYEE CONDITIONS.

The Board's October 21, 2004 decision found the Oregon Short Line employee protective conditions would be appropriate. (Decision, 2):

The interest of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

The finding by the Director Office of Proceeding (DOP) is arbitrary, irrational, and constitutes prejudgment. Having set the matter for a proceeding, the question of adequate employee protection should have been left for submissions by the parties.

The verified statement of Samuel J. Nasca, attached hereto, together with his earlier verified statements of October 5 and October 25, 2004, indicate that New York Dock would be the required conditions. The Oregon Short Line applies where a single rail carrier is involved; here, there are three carriers directly involved, D&H, CPR, and NSR, and one indirectly involved, CNR. It


would be ludicrous to impose Oregon Short Line under the circumstances.

Accordingly, if the D&H petition for exemption is approved, despite our objections, the Board at the minimum should impose New York Dock.

CONCLUSION

The Board should consolidate this proceeding with CPRC Notice, and with NSR Notice, and ultimately deny the D&H petition. If the petition is approved despite the opposition, the minimum employee conditions should be New York Dock.

Respectfully submitted,

  
GORDON P. MacDOUGALL  
1025 Connecticut Ave., N.W.  
Washington DC 20036

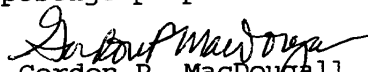
November 10, 2004

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon parties of record by first class mail postage-prepaid.

Washington DC

  
Gordon P. MacDougall

VERIFIED STATEMENT  
OF SAMUEL J. NASCA

My name is Samuel J. Nasca, with offices at 35 Fuller Road, Albany, NY 12205. I serve as New York State Legislative Director for United Transportation Union (UTU-NY), a full-time elective position which I have held since March 1984. My railroad seniority commenced in 1967 on the former Erie-Lackawanna Railroad Company. UTU is the collective bargaining representative for certain operating personnel employed by Delaware and Hudson Railway Company, Inc. (D&H), Canadian Pacific Railway Company (CPRC), and Norfolk Southern Railway Company (NSR).

I am fully familiar with railroad operations in New York State; and with the lines involved in this discontinuance proceeding. I have read the petition by D&H seeking an exemption from the provisions of 49 U.S.C. 10903, so as to permit D&H to discontinue its line between Lanesboro, PA, and Buffalo, NY, and connecting trackage at Buffalo, NY, a distance of approximately 229.55 miles.

The instant D&H petition for exemption is associated with other transactions. Some of these other transactions have been identified by D&H, CPRC, and NSR, in their joint "Summary of Documents," filed October 12, 2004, to be (1) Surrender of SK Yard Lease, (2) D&H assignment to CPRC of its various trackage rights over NSR at Buffalo, (3) Restated Buffalo Trackage Rights Agreement, (4) Southern Tier Haulage Services Agreement, and (5) Bison Yard Terminal Services Agreement.

CPRC has filed a notice of exemption for certain related trackage rights over NSR at Buffalo. I have pending a petition to

revoke that exemption in Finance Docket No. 34561, Canadian Pacific Railway Company-Trackage Rights Exemption-Norfolk Southern Railway Company (CPRC Notice). A notice of exemption filed by NSR for trackage rights between Binghamton and Saratoga Springs, NY, is also related to D&H's proposed discontinuance in the instant proceeding. I have pending a petition to revoke that exemption in Finance Docket No. 34562, Norfolk Southern Railway Company-Trackage Rights Exemption-Delaware and Hudson Railway Company, Inc.-Between Saratoga Springs, NY, and Binghamton, NY (NSR Notice). Related agreements, in addition to NSR Notice, embraced in the Routes Point-Binghamton Corridor Agreements, are (1) Rouses Point-Saratoga Springs Haulage Service, and (2) East Binghamton Yard Terminal Services. These other agreements are included in the same "Summary of Documents," which I have reviewed.

My organization is opposed to D&H's proposed discontinuance of its so-called "Southern Tier" line, and related trackage. I believe it would be contrary to the public interest, and the rail transportation policy, and harmful to railroad employees.

D&H in its petition asserts the D&H discontinuance would affect proximately 25 D&H agreement employees, which affected positions include 8 locomotive engineers, 12 conductors, 1 carman, 2 MofW employees, and 2 yardmasters. The D&H notice to employees, attached to my October 25, 2004 filing, indicates that 29 jobs will be eliminated.

D&H proposes that approval of its petition for exemption be accompanied by the so-called Oregon Short Line employee protective conditions. I disagree that Oregon Short Line would be appropriate. In essence, D&H and NSR, which both operate between Buffalo

and Binghamton, would consolidate their operations; and CPR would substitute for some D&H operations in the Buffalo area.

I am recently concerned with the joint CPR/NSR announcement with Canadian National Railways (CNR), on November 8, 2004, that traffic will be diverted from the Buffalo gateway, effective November 19, 2004, in favor of routing via the recently acquired haulage-trackage rights between Rouses Point-Saratoga Springs-Binghamton at issue in NSR Notice. At present, CNR trains 334 and 335 arriving and departing Buffalo, which become NSR 30T and 31T, between Buffalo and Binghamton, will be diverted to Rouses Point for operation between Rouses Point and Binghamton. The present D&H trains 162, 166, 419, and 167, would be discontinued, and the resultant D&H "haulage" traffic consolidated with remaining NSR trains. Attached as my Exhibit 1, consisting of 5 pages, are the CPR, NSR, and CNR announcements made November 8, 2004.

The D&H crews, based in Buffalo, upon coordination of D&H traffic into NSR trains, should not be relegated to the exercise of seniority at Binghamton; instead, D&H crews should have the option of following their "haulage" work on NSR trains, and be permitted to participate in the selection of forces and assignment of employees for operation of the NSR trains. Of course, both NSR and D&H employees would be adversely affected by the diversion of business from Buffalo to Rouses Point, for handling by the haulage and trackage rights embraced in NSR Notice between Rouses Point and Binghamton. In short, I believe the so-called New York Dock conditions would be more appropriate for the transactions involved. The D&H discontinuance and related transactions, including

CPRC Notice, and NSR Notice, involve more than the employees of a single carrier for which Oregon Short Line was designed.

The same reasoning is applicable to D&H yard personnel at SK Yard, which is to be consolidated with NSR's Bison Yard. It would be inequitable to have D&H yard employees considered without reference to the transfer of work to Bison Yard. The SK Yard personnel should have the option of remaining in the Buffalo area.

The D&H operation over the "Southern Tier" goes back to the USRA Final System Plan, with NSR only recently becoming a carrier on the line. It would be most inequitable for D&H employees, with 20-25 years in the Buffalo area, to be forced to move a considerable distance to Binghamton, in deference to newly-arrived NSR operating personnel.

Attached hereto is my verified statement, with four attachments, dated October 5; and my supplemental verified statement, with one appendix, dated October 25, 2004, both presenting factual matter for the Board's consideration. This is my Exhibit 2, consisting of 15 pages.

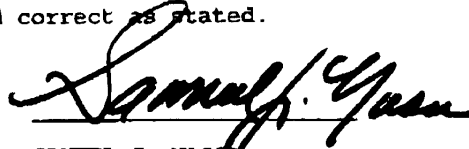
The Board should deny D&H's exemption request; if despite the opposition, the D&H petition is nonetheless approved, New York Dock conditions should be imposed for affected employees.

Finally, I wish to state that the instant proceeding involving the D&H petition for exemption, should be consolidated with CPRC Notice, and NSR Notice.

VERIFICATION

STATE OF NEW YORK  
COUNTY OF ALBANY

Under the penalties of perjury, I affirm the foregoing  
verified statement is true and correct as stated.

  
SAMUEL J. NASCA

Dated at  
Albany, NY  
November 10, 2004



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## **CN, CPR and Norfolk Southern Announce Agreement to Improve Freight Service Between Eastern Canada and the Eastern U.S.**

**MONTREAL, Nov. 8, 2004** — CN, Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today announced an agreement that will significantly improve freight service between Eastern Canada and the Eastern United States.

The three-party arrangement will give CN and NSR a seamless, direct north-south routing over CPR's lines south of Montreal that will slice as much as two days' transit time off some 20,000 annual shipments. It will also increase freight traffic density and revenues on CPR's wholly owned subsidiary, the Delaware and Hudson Railway. Implementation is scheduled to begin Nov. 19, 2004.

CN-NSR traffic destined for the Eastern U.S. will move in CPR trains on CPR's line between Rouses Point, N.Y., and Saratoga Springs, under a freight haulage arrangement between CPR and NSR. This CN-NSR traffic will then move in NSR trains over CPR's line between Saratoga Springs and the NSR connection near Harrisburg, Pa., under a trackage rights agreement between CPR and NSR.

The new agreement will cut 330 miles off the current routing used by CN and NSR, which sees freight traffic handled more circuitously through the Buffalo, N.Y., gateway.

E. Hunter Harrison, president and chief executive officer of CN, said: "This three-railroad agreement will benefit both customers and railroads. First, it will offer CN's existing merchandise carload customers in Quebec and the Maritimes quicker access to important consuming markets in the Eastern United States. And second, it will enable the participating railroads to improve the utilization of their networks and locomotive and car fleets."

David R. Goode, chairman and chief executive officer of NSR, said: "We continue to identify and implement efficiencies benefiting shippers throughout North America. This agreement demonstrates our commitment to aggressively pursue opportunities to improve service."

Rob Ritchie, president and chief executive officer of CPR, said: "This is an important initiative that takes costs out of the rail industry by placing freight traffic on the most efficient routing without regard to ownership. It also creates a significant source of new earnings for our Delaware and Hudson subsidiary and is another major milestone in improving the profitability and value of this part of our network."

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Vancouver, Prince Rupert, B.C., Montreal, Halifax, New Orleans, and Mobile, Ala., and the key cities of Toronto, Buffalo, Chicago, Detroit, Duluth, Minn./Superior, Wis., Green Bay, Wis., Minneapolis/St. Paul, Memphis, St. Louis, and Jackson, Miss., with connections to all points in North America. For more information, consult CN's website at

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**Canadian Pacific Railway**

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This page was last updated on November 8, 2004

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F.D. No. 34561  
F.D. No. 34562  
AB-156 (Sub-25X)

VERIFIED STATEMENT  
OF SAMUEL J. NASCA

My name is Samuel J. Nasca, with offices at 35 Fuller Road Albany, NY 12205. I serve as New York State Legislative Director for United Transportation Union (UTU-NY), a full-time elective position I have held since March 1984. My seniority commenced in 1967 on the former Erie-Lackawanna Railroad Company.

I am fully familiar with railroad operations in New York State, and with the lines involved in the three captioned proceedings. I have read the notices of exemption in F.D. No. 34561, and in F.D. No. 34562, involving trackage rights in the Buffalo area, and trackage rights between Binghamton and Saratoga Springs, NY, and I have also read the D&H petition in AB-156 (Sub-No. 25X), where D&H would discontinue its operations between Buffalo and Binghamton.

The United Transportation Union (UTU) represents persons employed by D&H, NS, and CPR that perform work as engineers, conductors, brakemen, and switchmen.

The transactions embraced in the three dockets would have a catastrophic impact upon D&H employees. D&H employees would lose their work at Buffalo, including the SK yard, and also their employment on D&H trains operating between Buffalo and Binghamton. Further, D&H employees would suffer if NS is accorded trackage rights over D&H's line between Binghamton and Saratoga Springs.

I ask that the STB stay the operation of the two exemption notices. I include the CPR notice for Buffalo, as well as the NS

notice for Binghamton/Saratoga Springs, because it is not clear to me that CPR will not seek to change its operations in anticipation of other events.

This verified statement is primarily directed to the trackage rights noticed by NS over D&H lines, inasmuch as it is my understanding that exercise of the CPR trackage noticed for Buffalo is dependent upon prior STB authorization of D&H's discontinuance of service between Buffalo and Binghamton. A stay of the NS notice is necessary to protect D&H employees now engaged in the D&H yard at Binghamton, as well as in service over the 155-mile line between Binghamton and Saratoga Springs.

The employees engaged in D&H train and engine service will suffer from the diversion of business presently handled by D&H. NS does not have its own line or trackage rights between Binghamton and Saratoga Springs. NS estimates it will abolish 4 train and engine positions at Binghamton, and establish 6 new road crews positions for its initial operation between East Binghamton and Saratoga Springs. This would mean less work for D&H crews, who presently perform the service. Employee conditions would be insufficient, and are limited in terms. If the exemption ultimately is revoked, there is no known way D&H employees could recover damages from D&H under their CBA with D&H, and the status quo could not be restored.

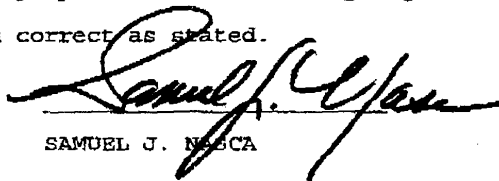
Moreover, although additional NS positions would be created, some NS employees would be adversely affected in the process of exercising seniority, and similarly would be unable to seek damages, or have the status quo restored.

The three proceedings before the STB are not likely to be the only filings concerning this restructuring. D&H employees have been advised they may have employment opportunities in the forthcoming trackage rights to be accorded between Detroit and Chicago. Yet this is not imminent. It is a further reason for stay at this time.

VERIFICATION

STATE OF NEW YORK  
COUNTY OF ALBANY

Under the penalties of perjury, I affirm the foregoing  
Verified Statement is true and correct as stated.

  
SAMUEL J. NEESCA

Dated at  
Albany, NY  
October 5, 2004

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Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today signed a memorandum of understanding for an exchange of trackage rights, freight haulage and yard services that will increase operational efficiency and enhance rail service to customers.

CPR (TSX/NYSE: CP) announced in June 2003 it was restructuring its northeastern U.S. operations and was seeking proposals for ways to increase freight volumes, reduce operating costs and improve earnings. CPR's northeastern U.S. network is operated as the Delaware and Hudson Railway.

"This agreement with NSR opens up new opportunity to move our northeastern U.S. franchise into a position of profitability," Rob Ritchie, President and Chief Executive Officer of CPR, said. "We expect the changes will generate higher traffic volumes and revenues, greater productivity and lower operating costs."

David R. Goode, Norfolk Southern Chairman, President and Chief Executive Officer, said, "This is an excellent example of railroads cooperating to better serve our customers. We will be able to jointly provide transportation solutions that will improve efficiency and quality of service for both carriers in the northeast U.S."

Under the agreement, CPR and NSR will consolidate freight marshalling at yards in Buffalo and Binghamton, N.Y.:

- CPR will cease yard operations in Buffalo, shifting all freight marshalling to the NSR yard there.
- Similarly, NSR will shift its yard operations in Binghamton to CPR's East Binghamton yard.

There are three major components to the new trackage rights and freight haulage arrangements between CPR and NSR:

- CPR will be able to move NSR freight traffic between Rouses Point and Saratoga Springs, N.Y., under a haulage arrangement. NSR will operate its own trains over CPR's line between Saratoga Springs and Binghamton, N.Y., under a trackage rights arrangement. The arrangements will generate higher revenue for CPR and provide NSR with a substantially shorter route to Quebec and the Maritime provinces.
- CPR's freight traffic between Binghamton and Buffalo, N.Y., will move in NSR trains under a haulage arrangement, replacing a trackage rights agreement under which CPR operated its own trains between the two cities. The arrangement will reduce CPR's operating costs and generate additional revenue for NSR.
- CPR will operate over a new NSR route using existing rail lines between Detroit and Chicago under a trackage rights agreement. It will be the shortest rail route between the two cities and will provide CPR with a faster, lower-cost lane.

"CPR's challenge remains to take this part of our network to a level of profitability that will make it self-sustaining," Mr. Ritchie said. "We are prepared to examine additional measures that, in concert with our NSR agreement, will further optimize our assets and drive up profitability."

New trackage rights arrangements and the discontinuance of trackage rights require

approval of the U.S. Surface Transportation Board.

Mr. Ritchie will hold a conference call with analysts and reporters today at 3:30 p.m. Eastern time to discuss details of the agreement with NSR. The telephone numbers for the call are 1-800-814-4857 or 416-640-1907. Callers should dial in 10 minutes prior to the call. A telephone replay of the call will be available through July 7 at 1-877-289-8525 or 416-640-1917, pass code 21056014 followed by the pound key. The call will also be webcast live on CPR's website. To access the webcast, click on [The webcast will be archived](#)

Canadian Pacific Railway is a transcontinental carrier operating in Canada and the U.S. Its 14,000-mile rail network serves the principal centres of Canada, from Montreal to Vancouver, and the U.S. Northeast and Midwest regions. CPR feeds directly into America's heartland from the East and West coasts. Alliances with other carriers extend its market reach throughout the U.S. and into Mexico. Canadian Pacific Logistics Solutions provides logistics and supply chain expertise worldwide. For more information, visit CPR's website at [CPR's website](#)

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June 30, 2004

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Canadian Pacific Railway (CPR) and Norfolk Southern Railway (NSR) today filed with the United States Surface Transportation Board (STB) seeking authority for trackage rights arrangements that will improve operational efficiency and enhance rail service in the U.S. Northeast.

The railways said today's filings are an important milestone in implementing improvements that will benefit shippers in the Northeastern U.S. market. The filings arise from a series of transactions announced by CPR and NSR on June 30, 2004, involving trackage rights, freight haulage and yard services.

Under the filings, NSR is seeking STB authority for new trackage rights to operate its trains on CPR's Delaware and Hudson Railway subsidiary between Saratoga Springs and Binghamton, N.Y. CPR is seeking STB authority to discontinue trackage rights under which the Delaware and Hudson Railway currently operates its trains on NSR track between Binghamton and Buffalo, N.Y.

Along with the trackage rights:

- CPR will move NSR freight traffic between Rouses Point and Saratoga Springs under a freight haulage arrangement;
- NSR will move CPR traffic between Buffalo and Binghamton under a freight haulage arrangement;
- NSR will provide yard switching services for CPR freight cars in Buffalo; and
- CPR will provide yard switching services for NSR freight cars in Binghamton.

The two railways also announced on June 30 that NSR would create a new route between Detroit and Chicago. The route, which is expected to be open in 2005, will be the shortest rail route between the two cities, providing CPR with a faster, lower-cost lane between two of North America's biggest transportation hubs.

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CPR contacts

Norfolk Southern contacts

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Atta. 4  
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F.D. No. 34561  
F.D. No. 34562  
AB-156 (Sub-25X)

SUPPLEMENTAL VERIFIED  
STATEMENT OF SAMUEL J. NASCA

My name is Samuel J. Nasca. I am the same person of same name that submitted a verified statement, dated October 5, 2004, in this proceeding.

I have reviewed my October 5, 2004 statement, and incorporate the same herein.

Attached as my Appendix 1 is the 6-page notice by D&H given to its employees, together with Questions and Answers, dated June 30, 2004. Appendix 1 gives information supplemental to the general press releases attached to my earlier verified statement.

I am further concerned about permitting the Rouses Point-Binghamton corridor agreements, listed in the "Summary of Documents" filed October 12, 2004, by NS, CPR, and D&H, which include the "Saratoga-East Binghamton Trackage Rights Agreement," to become effective prior to determination of the D&H discontinuance proceeding, which the Board instituted on October 21, 2004. My fear is that the trackage rights might be utilized to purposes other than traffic now having a movement on the D&H line between Binghamton and Buffalo.

VERIFICATION

STATE OF NEW YORK  
COUNTY OF ALBANY

Under the penalties of perjury, I affirm the foregoing is true and correct as stated.

/s/ Samuel J. Nasca

SAMUEL J. NASCA

October 25, 2004

**To Employees**

**JUNE 30, 2004**

**CPR AND NORFOLK SOUTHERN MOVE TO IMPROVE PERFORMANCE  
OF NORTHEASTERN U.S. NETWORK**

CPR and Norfolk Southern Railway (NSR) announced today they have signed a memorandum of understanding that will increase operations efficiency and enhance rail services to customers in the northeastern U.S. The agreement provides a new opportunity to quickly begin the turnaround needed on CPR's northeastern U.S. (NEUS) franchise. It will also strengthen the U.S. portion of CPR's highly competitive Montreal-Chicago corridor by opening up a new lane that will be the shortest, swiftest route between the key hubs of Detroit and Chicago.

The agreement is for an exchange of trackage rights, freight haulage and yard services, and is the initial outcome of a comprehensive review of options for addressing our challenges in the NEUS.

*Here are the major components:*

- **Yard consolidation** to reduce operating costs and increase productivity. CPR will cease yard operations in Buffalo and shift all freight marshalling to the NSR yard there. NSR will shift its yard operations in Binghamton to CPR's East Binghamton yard.
- **Freight haulage arrangements.** CPR will be able to move NSR freight traffic between Rouses Point and Saratoga Springs. NSR will move CPR's freight traffic between Binghamton and Buffalo. (This new haulage arrangement replaces CPR's current trackage rights agreement with NSR between Binghamton and Buffalo.)
- **Trackage rights arrangements.** CPR will operate its own trains over a new shorter and lower-cost NSR route between *Detroit and Chicago, once NSR connects two existing rail lines.* NSR will operate its trains over CPR's line between *Saratoga Springs and Binghamton.*

The yard consolidation will create new efficiencies for both CPR and NSR. The trackage rights and haulage arrangements with NSR will provide opportunities to generate new revenue and reduce operating costs on our NEUS franchise. NSR is expected to complete the track connection for the new Detroit-Chicago route in the next year.

It will take hard work and dedication from all involved to quickly translate these changes into profitability for our NEUS franchise. There may be further opportunities to optimize our assets so that our NEUS franchise achieves a level of profitability that makes it self-sustaining. This is our goal and we will continue to examine opportunities that will, in concert with the NSR agreement, help us achieve it as quickly as possible.

The impact on employment at CPR is mixed. Four new jobs will be created and 29 will be eliminated on the NEUS for a net reduction of 25 positions. CPR also expects to add between 40 and 45 train crew positions in Elkhart, Indiana, as a result of the new route between Detroit and Chicago. Many of these new crew positions will be available to NEUS employees whose positions are eliminated. The process for filling these positions will be communicated as details are ironed out. CPR will pay the cost of relocation.

CPR will follow established guidelines for employee reductions, including federally mandated labor protection, which is expected to be imposed by the U.S. Surface Transportation Board.

More information on these new arrangements with NSR is available on RailTown.

We established CPR's presence in the NEUS with the purchase of the D&H in 1991, when it was in bankruptcy protection. We have worked tirelessly since then to turn it around. The NEUS franchise is positioned solidly as a bridge carrier with access to a market of more than 45 million people. Let's work to make it a success for the long-term.

Fred Green  
Executive Vice-President, Operations and Marketing  
and President, D&H

## **Q&A for Employees**

**JUNE 30, 2004**

### **What does the memorandum of understanding with NSR achieve for CPR?**

The main benefits are:

- A more cost effective and flexible franchise;
- Higher traffic volumes and greater revenues;
- Increased productivity and reduced operating costs;
- Optimization of assets;
- We remain a competitive player in the NEUS rail market.

**Is the agreement with NSR subject to government approvals? If so, when will we know whether the required approvals will be given?**

Two areas of the agreement require approval of the U.S. Surface Transportation Board:

- 1) *Discontinuance of the trackage rights agreement between CPR and NSR, under which CPR currently moves its own trains over NSR track between Binghamton and Buffalo, N.Y.*
- 2) *New trackage rights arrangements under which:*
  - a. *NSR will operate its own trains over CPR track between Saratoga Springs and Binghamton, N.Y.; and*
  - b. *CPR will operate its own trains over NSR track between Detroit and Chicago.*

New trackage rights arrangements can be approved in a matter of weeks. *Discontinuance of trackage rights typically requires a few months. However, this is entirely in the hands of the STB.*

**What is the duration of the new agreement with NSR?**

*There is no specific termination date.*

**Have past CPR-NSR initiatives been successful?**

CPR and NSR have a history of successful mutually beneficial arrangements. In 1999, after NSR acquired part of the Conrail assets, D&H began providing haulage services enabling NSR to reach the New England market. More recently, CPR and NSR entered into a trackage rights agreement whereby NSR transferred four trains per day to the D&H south of Binghamton.

**The new agreement calls for NSR to connect two separate lines to give CPR a new and shorter route between Detroit and Chicago. Where are these lines and when will NSR connect them?**

One line extends southwest from Detroit to Fort Wayne, Indiana, and the other is the former Conrail line that extends east from Chicago to Toledo, Ohio. The two cross at Butler, Indiana, north of Fort Wayne. A track connection will be installed over the next year.

**The Detroit-Chicago route is not in the northeastern U.S. Why is it part of a deal designed to turn around CPR's northeastern U.S. (NEUS) operation?**

The Detroit-Chicago change was negotiated at the same time and has broad benefits for CPR. The link is also an important feeder corridor to the NEUS. The new 300-mile link is 50 miles shorter than the current route we use over CSX. The new NSR route will be the shortest and swiftest of any route between Detroit and Chicago and will give CPR a lower-cost connection for freight moving to or originating in the NEUS.

**What will happen if the STB does not grant approval?**

We expect approval to be granted. If it is not granted, we would need to evaluate the reasons for refusal before deciding our next step.

**Is the agreement with CSX still in effect and when does it expire?**

The agreement with CSX, which is a haulage arrangement, remains in effect. It expires in 2015.

**What was driving CPR's need to restructure its NEUS network?**

CPR acquired the Delaware and Hudson Railway in 1991. At the time, the D&H (which we now call our northeastern U.S. network) was in bankruptcy protection. Since then, CPR has worked tirelessly to make the NEUS a success. However, during this time, NEUS expenses have been virtually the same as its revenue. A company is not profitable when it has to spend a dollar for every dollar of revenue it earns.

While the rest of the CPR operation is profitable, it should not be used to prop up an unprofitable segment of the business. Restructuring was the best method to ensure this rail line was making a positive contribution to our success.

**Are the new arrangements with NSR really enough to fix the problem?**

We expect our agreement with NSR will quickly move our NEUS franchise to a position of profitability whereby revenues exceed operating expenses. It will take hard work and dedication from everyone involved. There may be further opportunities to optimize our assets so that the NEUS achieves a level of profitability that makes it self-sustaining. This is our goal and we will continue to examine opportunities that, in concert with the NSR agreement, will help us achieve it as quickly as possible.

**What kind of message does this send to shippers?**

Our agreement with NSR sends a message that CPR wants to ensure shippers have a viable competitive alternative in the U.S. Northeast. We expect to achieve efficiencies that will help make our NEUS franchise stronger for the shipping community.

**What is the job impact of these changes?**

The impact on employment is mixed. We will create between 40 and 45 new crew positions at Elkhart, Indiana, for the new route between Detroit and Chicago.

On the NEUS, there will be a net reduction of 25 job positions. Here is a breakdown:

Some 29 positions will be eliminated as a result of the yard consolidation and discontinuance of CPR's trackage rights between Buffalo and Binghamton. In Buffalo, these include 22 train crew positions as well as two positions in track maintenance, one in car repair, two in yard management, one in terminal management and one in police management.

Four new train crew positions will be created at Saratoga Springs.

Many of the new crew positions at Elkhart will be available to NEUS employees whose positions are eliminated and the process for filling these positions will be communicated as details are ironed out. CPR will pay the cost of relocation.

Unionized employees on the NEUS will be entitled to exercise seniority rights as provided in existing labor contracts. CPR will follow established guidelines for employee reductions, including federally mandated labor protection, which is expected to be imposed by the U.S. Surface Transportation Board.

**Will the investment community be satisfied with this? Were investors and analysts expecting major job reductions in CPR's northeastern U.S. network?**

Investors and analysts want to see that we are operating efficiently and productively, and are generating a profit. Whether they are satisfied will depend on the level of profitability we generate in the operation, not on the number of job positions eliminated.

**What were the other proposals received by CPR?**

All proposals include a confidentiality agreement, which we must respect. As a result, we cannot comment on the proposals or divulge who made them. We continue to explore options for further improving the economic performance of our NEUS franchise.

**Will D&H remain a wholly owned subsidiary of CPR, or will its corporate structure change in any way as a result of the new arrangements with NSR?**

No changes in our corporate structure are contemplated at this point.

**Will CPR put any expansion or improvement capital into its NEUS franchise?**

Our first priority is to make the existing infrastructure as profitable as possible by decreasing our operating costs and increasing revenue and yield. *We need sufficient free cash flow and profitability to make capital investments above those required to maintain the track network. Beyond this, we are interested at any time in public-private partnerships by which government provides the needed capital to provide a rail service that offers public benefits.*